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10/069,827	02/26/2002	Helene Derand	HO-P02378USO	5350
26271	7590	07/23/2009	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095			BARTON, JEFFREY THOMAS	
			ART UNIT	PAPER NUMBER
			1795	
			NOTIFICATION DATE	DELIVERY MODE
			07/23/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*  
HELENE DERAND, ANDERS LARSSON and  
JAMES VAN ALSTINE

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Application No. 10/069,827  
Technology Center 1700

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Mailed: July 6, 2009

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Before DEBORAH L. PERRY, *Supervisory Paralegal Specialist, Review Team.*

PERRY, *Supervisory Paralegal Specialist, Review Team*

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received at the Board of Patent Appeals and Interferences for the first time on June 27, 2008. Further review of the application has revealed that the application is not ready for docketing as an

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appeal. Accordingly, the application is herewith being returned to the Examiner.

The matters requiring attention prior to docketing are identified below.

## APPEAL BRIEF

### Summary Of Claimed Subject Matter

An in-depth review of the Second Amended Appeal Brief dated May 23, 2007, fails to map all the independent claims, specifically, Claim 30, to the specification by page and line number. Specifically, 37 C.F.R. 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under ' 41.31.

\* \* \*

(c)(1) The brief shall contain the following items...of this section:

(v) *Summary Of Claimed Subject Matter*. A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 C.F.R. § 41.37(c)(1)(v)).

Section 37 C.F.R. ' 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 C.F.R. § 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 C.F.R. § 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) hold the Appeal Brief filed May 23, 1007, defective;

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- 2) direct applicants to file a paper which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v); and
- 3) for such further action as may be appropriate

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e. abandonment, issue, reopening prosecution).

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797

DLP/cdc

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